

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFF J. HANCOCK,

No. C 07-04469 CW (PR)

Petitioner,

ORDER DIRECTING RESPONDENT TO
SHOW CAUSE WHY THE PETITION
SHOULD NOT BE GRANTED, AND
DENYING MOTION FOR APPOINTMENT
OF COUNSEL AND FOR EVIDENTIARY
HEARING

v.

NICK DAWSON, Acting Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee. It does not appear from the face of the petition that it is without merit. Good cause appearing, the Court hereby issues the following orders:

1. The Clerk of the Court shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California.¹ The Clerk shall also serve a copy of this Order on Petitioner at his current address.

2. Respondent shall file with this Court and serve upon Petitioner, within sixty (60) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

¹ Petitioner named D. Sedley as the respondent in this action. Acting Warden Nick Dawson has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1 3. If Petitioner wishes to respond to the Answer, he shall
2 do so by filing a Traverse with the Court and serving it on
3 Respondent within thirty (30) days of his receipt of the Answer.
4 Should Petitioner fail to do so, the petition will be deemed
5 submitted and ready for decision thirty (30) days after the date
6 Petitioner is served with Respondent's Answer.

7 4. Respondent may file a motion to dismiss on procedural
8 grounds in lieu of an Answer, as set forth in the Advisory
9 Committee Notes to Rule 4 of the Rules Governing Section 2254
10 Cases. If Respondent files such a motion, Petitioner shall file
11 with the Court and serve on Respondent an opposition or statement
12 of non-opposition to the motion within thirty (30) days of receipt
13 of the motion, and Respondent shall file with the Court and serve
14 on Petitioner a reply within fifteen (15) days of receipt of any
15 opposition.

16 5. It is Petitioner's responsibility to prosecute this case.
17 Petitioner must keep the Court and Respondent informed of any
18 change of address and must comply with the Court's orders in a
19 timely fashion. Petitioner must also serve on Respondent's counsel
20 all communications with the Court by mailing a true copy of the
21 document to Respondent's counsel.

22 6. Extensions of time are not favored, though reasonable
23 extensions will be granted. Any motion for an extension of time
24 must be filed no later than ten (10) days prior to the deadline
25 sought to be extended.

26 7. Petitioner has requested the appointment of counsel and
27 an evidentiary hearing. The Sixth Amendment's right to counsel does
28 not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791

1 F.2d 722, 728 (9th Cir. 1986) (unless an evidentiary hearing is
2 required, the decision to appoint counsel in habeas corpus
3 proceedings is within the discretion of the district court).
4 Petitioner clearly presented his claims for relief in the petition
5 and an order to show cause is issuing. Accord Bashor v. Risley,
6 730 F.2d 1228, 1234 (9th Cir. 1984) (although petitioner had no
7 background in law, denial of appointment of counsel within
8 discretion of district court where petitioner clearly presented
9 issues in petition and accompanying memorandum). There also is no
10 indication that an evidentiary hearing is required under 28 U.S.C. §
11 2254(e). Petitioner's claims do not rely upon extra-record evidence
12 and a factual basis exists in the record to determine the claims.
13 If during its review of the merits of the petition the Court
14 determines that further fact finding is required, the Court will
15 decide whether to hold an evidentiary hearing or whether the facts
16 can be gathered by way of mechanisms short of an evidentiary
17 hearing, such as supplementation of the record with sworn
18 declarations from the pertinent witnesses. See Downs v. Hoyt, 232
19 F.3d 1031, 1041 (9th Cir. 2000). The Court will appoint counsel on
20 its own motion if an evidentiary hearing is later required. See
21 Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if
22 evidentiary hearing is required). For these reasons, Petitioner's
23 requests for the appointment of counsel and an evidentiary hearing
24 are DENIED.

25 8. Petitioner's request for leave to proceed in forma
26 pauperis is DENIED as moot. Petitioner recently paid the requisite
27 filing fee.
28

1 9. The Clerk of the Court is directed to substitute Acting
2 Warden Nick Dawson as Respondent in this action.

3 10. This Order terminates Docket nos. 2 and 3.

4 IT IS SO ORDERED.



5 Dated: 10/26/07

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JEFF J HANCOCK,

Plaintiff,

v.

D SEDLEY et al,

Defendant.

Case Number: CV07-04469 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 26, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Attorney General
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San Francisco, CA 94102

Warden
Avenal State Prison
P. O. Box 8
Avenal, CA 93204

Dated: October 26, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk